

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

11 LARRY R. GUIDI and SHARON GUIDI, )  
12 Plaintiffs, )  
13 v. )  
14 PAUL FINANCIAL, LLC, a Delaware Limited )  
15 Liability Company; RBS FINANCIAL )  
16 PRODUCTS INC., a Delaware Corporation; )  
17 RANDOM PROPERTIES ACQUISITION )  
18 CORP. III, a Delaware Corporation; )  
19 ROUNDPOINT MORTGAGE SERVICING )  
20 CORPORATION, a Florida Corporation; )  
21 QUALITY LOAN SERVICE )  
22 CORPORATION, a California Corporation; and )  
23 all persons or entities unknown claiming any )  
24 legal or equitable right, title, estate, lien or )  
25 interest in the property described in this )  
26 complaint adverse to Plaintiffs' title thereto, and )  
27 DOES 1 through 25, inclusive, )  
28 Defendants. )

Case No.: 13-CV-01919-LHK

ORDER GRANTING ROUNDPOINT'S  
MOTIONS TO DISMISS PLAINTIFFS'  
FIRST AMENDED COMPLAINT  
WITHOUT PREJUDICE

24 Larry Guidi and Sharon Guidi ("Plaintiffs") bring this action based on alleged misconduct  
25 related to Plaintiffs' adjustable rate mortgage loan. Defendants RBS Financial Products Inc.  
26 ("RBSFP") and Random Properties Acquisition Corp. III ("RPAC") (collectively, "RBS") jointly  
27 move to dismiss Plaintiffs' First Amended Complaint, *see* ECF No. 25 ("FAC"), pursuant to  
28

1 Federal Rule of Civil Procedure 12(b)(6). ECF No. 26 (“RBS Mot. to Dismiss”). Defendant  
 2 Roundpoint Mortgage Servicing Corporation (“Roundpoint”) also moves to dismiss Plaintiffs’  
 3 FAC under Rule 12(b)(6). ECF No. 27 (“Roundpoint Mot. to Dismiss”). Having considered the  
 4 parties’ arguments, the relevant law, and the record in this case, the Court hereby GRANTS RBS  
 5 and Roundpoint’s Defendants’ Motions to Dismiss without prejudice.

6 **I. BACKGROUND**

7 **A. Factual Allegations<sup>1</sup>**

8 Plaintiffs are the owners of the real property located at 1009 Heatherstone Avenue,  
 9 Sunnyvale, California, 94087 (“Subject Property”). FAC ¶ 3. On June 1, 2007, Plaintiff Sharon  
 10 Guidi obtained an Adjustable Rate Mortgage Loan (the “Loan”) from Paul Financial LLC (“Paul  
 11 Financial”) in the amount of \$618,000 secured by a Deed of Trust for the refinancing of the Subject  
 12 Property. FAC ¶ 23; Roundpoint RJN, Ex. C. The Deed of Trust was recorded on June 13, 2007,  
 13 in Santa Clara County, as instrument No. 2007-19468107. *Id.* On November 16, 2010, the prior  
 14 servicer of the Loan notified Plaintiff Sharon Guidi that Roundpoint had taken over as servicer on  
 15 the Loan. FAC ¶ 7.

16 In or about the beginning of 2012, Plaintiffs defaulted on their loan as they could no longer  
 17 afford the increasing payments. FAC ¶ 21. Plaintiffs, however, did not immediately request a  
 18 modification of the loan. *Id.* On May 10, 2012, all beneficial interest in the Loan transferred to  
 19 RBSFP. FAC ¶ 5; Roundpoint RJN, Ex. D. On May 31, 2012, Quality Loan Service Corporation  
 20 (“Quality”)—RBSFP’s alleged trustee—recorded a Notice of Default (“NOD”) on the Subject

21 <sup>1</sup> These factual allegations are taken from Plaintiffs’ First Amended Complaint, ECF No. 25, and  
 22 judicially noticeable documents. Roundpoint and RBS filed Requests for Judicial Notice in  
 23 conjunction with their motions to dismiss. *See* ECF No. 26-1 (RBS’ Request for Judicial Notice);  
 24 ECF No. 28 (Roundpoint’s Request for Judicial Notice). Defendants ask the Court to take judicial  
 25 notice of a variety of public documents relating to Plaintiffs’ loan. None of these requests is  
 26 opposed. A court may judicially notice a fact if it is either “generally known within the trial  
 27 court’s jurisdiction” or “accurately and readily determined from sources whose accuracy cannot  
 28 reasonably be questioned.” Fed. R. Evid. 201(b). The documents for which RBS and Roundpoint  
 request judicial notice are all “matters of public record.” *Lee v. City of Los Angeles*, 250 F.3d 668,  
 689 (9th Cir. 2001); *Distor v. U.S. Bank NA*, No. C 09-02086 SI, 2009 WL 3429700, \*2 (N.D.Cal.  
 Oct. 22, 2009) (holding that a deed of trust, notice of default, and notice of trustee’s sale were  
 matters of public record and thus proper subjects of judicial notice). Accordingly, the Court finds  
 that they are not subject to reasonable dispute and are proper subjects of judicial notice.  
 Accordingly, the Court GRANTS RBS and Roundpoint’s Requests for Judicial Notice.

1 Property. FAC ¶ 22; Roundpoint RJN, Ex. F. The NOD indicated that, as of May 29, 2012, the  
2 past due amounts owed on the Loan were \$34,944.96. Roundpoint RJN, Ex. F. On September 6,  
3 2012, Quality recorded its Notice of Trustee's Sale, setting forth \$907,748.8 as the then unpaid  
4 "balance and other charges" due on the Loan. FAC ¶ 22; Roundpoint RJN, Ex. G. On September  
5 27, 2012, all beneficial interest in the Loan transferred to RPAC. FAC ¶ 6.

6 In January 2013, Plaintiffs contacted their lender twice to request a loan modification, but  
7 were denied each time. FAC ¶ 21. On January 28, 2013, Plaintiffs sent a qualified written request  
8 ("QWR") to Roundpoint. FAC ¶ 99. Under RESPA, *see* 12 U.S.C. § 2605(e)(1)(A), a borrower  
9 may send their loan servicer a QWR for information relating to the servicing of their loan. The  
10 QWR stated that Plaintiffs believed there were violations of RESPA in the processing of certain  
11 fees associated with Plaintiffs' loan and loan documentation, i.e., with the servicing of their loan,  
12 and requested a specific breakdown of the fees and an explanation as to why such charges were  
13 incurred. FAC ¶ 99.

14 Plaintiffs allege that Roundpoint failed to properly respond to Plaintiffs' QWR because  
15 Roundpoint did not, within 20 days after receipt of the QWR, provide a written response  
16 acknowledging receipt of the QWR, in violation of 12 U.S.C. § 2605(e)(1), and also did not  
17 provide Plaintiffs with any written explanation that includes the information requested by Plaintiffs  
18 or an explanation of why the information requested was unavailable within 60 days of receipt of  
19 the QWR, in violation of 12 U.S.C. § 2605(e)(2)(C). FAC ¶¶ 100-102. Plaintiffs further allege  
20 that "during the 60-day period beginning on the date of [Roundpoint's] receipt from Plaintiffs of  
21 the QWR [in which servicers are prohibited from providing information on overdue payments to  
22 credit reporting agencies]," Defendants "made improper credit reporting" by reporting to consumer  
23 reporting agencies overdue payments owed by Plaintiffs, in violation of 12 U.S.C. § 2605(e)(3).  
24 *See* FAC ¶¶ 103, 107-108. Plaintiffs allege that "Plaintiffs have been damaged in the amount of  
25 ongoing penalties, fees, and interest charged by Defendants," *see* FAC ¶ 106, and have suffered  
26 "significant injury to their credit score and [have been] prevented [] from obtaining additional  
27 credit during this time period . . ." FAC ¶ 107. Plaintiffs seek actual, statutory, and punitive  
28 damages. FAC ¶¶ 109-110.

## **B. Procedural History**

On March 14, 2013, Plaintiffs filed a complaint in the Superior Court of Santa Clara County asserting eleven causes of action against Paul Financial, RBS, Roundpoint, Quality Loan, and Does 1 through 25. *See* ECF No. 1 at 7-39 (“Compl.”). Of the eleven causes of action, only one is a federal claim: the sixth cause of action for violation of the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2601 *et seq.* *See* Compl. at 1. Roundpoint removed the entire action to federal court on April 26, 2013 on the basis of federal question jurisdiction. *See* Notice of Removal, ECF No. 1 at 1-5 (“Not. of Removal”) at 2-3.<sup>2</sup>

On May 29, 2013, Plaintiffs filed their First Amended Complaint, alleging the same eleven causes of action they had pled in state court, including ten state law claims and one federal claim (RESPA). *See* FAC. On June 13, 2013, RBS filed a motion to dismiss the FAC. RBS Mot. to Dismiss. Because Plaintiffs assert only seven of the ten state law claims against RBS, RBS only moves to dismiss these seven state law claims. *See id.* at i. That same day, Roundpoint filed a separate motion to dismiss the FAC. Roundpoint Mot. to Dismiss. Roundpoint moves to dismiss Plaintiffs' RESPA claim and various other state law claims Plaintiffs assert against Roundpoint. *See id.* On June 26, 2013, Plaintiffs filed their opposition to RBS's Motion to Dismiss. ECF No. 31. On June 27, 2013, Plaintiffs filed their opposition to Roundpoint's Motion to Dismiss. ECF No. 32 (Opp'n). Roundpoint and RBS filed their respective replies on July 3, 2013. ECF Nos. 33 and 34.

<sup>2</sup> The state law causes of action in the FAC include: (1) violation of California Bus. & Prof. Code § 17200; (2) Unfair and Deceptive Business Practices in Loan Servicing; (3) Unfair and Deceptive Business Practices in Foreclosure Process; (4) Fraud in Loan Origination in violation of Cal. Civ. Code. § 1572; (5) Setting aside pending trustee sale date based on wrongful foreclosure proceedings in violation of Cal. Civ. Code. § 2923.5; (6) Breach of contract; (7) Breach of implied covenant of good faith and fair dealing; (8) reformation of fraudulent contract and restitution in violation of Cal. Civ. Code §§ 1670.5, 1667, 1689, 3412; (9) quiet title; (10) declaratory relief under Cal. Code. Civ. Proc. § 1060. *See* FAC at 1.

1           **II.     LEGAL STANDARD**

2           **A.     Motion to Dismiss Under Rule 12(b)(6)**

3           Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include “a  
4           short and plain statement of the claim showing that the pleader is entitled to relief.” A complaint  
5           that fails to meet this standard may be dismissed pursuant to Federal Rule of Civil Procedure  
6           12(b)(6). The Supreme Court has held that Rule 8(a) requires a plaintiff to plead “enough facts to  
7           state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570,  
8           127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). “A claim has facial plausibility when the plaintiff  
9           pleads factual content that allows the court to draw the reasonable inference that the defendant is  
10           liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L.  
11           Ed. 2d 868 (2009). “The plausibility standard is not akin to a probability requirement, but it asks  
12           for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (internal quotation  
13           marks omitted). For purposes of ruling on a Rule 12(b)(6) motion, a court “accept[s] factual  
14           allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the  
15           nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.  
16           2008).

17           However, a court need not accept as true allegations contradicted by judicially noticeable  
18           facts, *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and the “[C]ourt may look  
19           beyond the plaintiff’s complaint to matters of public record” without converting the Rule 12(b)(6)  
20           motion into one for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 1995).  
21           Nor is the court required to “assume the truth of legal conclusions merely because they are cast in  
22           the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per  
23           curiam) (quoting *W. Min. Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Mere “conclusory  
24           allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.”  
25           *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004); *accord Iqbal*, 556 U.S. at 678.  
26           Furthermore, “a plaintiff may plead herself out of court” if she “plead[s] facts which establish that  
27           [s]he cannot prevail on h[er] . . . claim.” *Weisbuch v. Cnty. of L.A.*, 119 F.3d 778, 783 n.1 (9th Cir.  
28           1997) (internal quotation marks and citation omitted).

1                   **B.       Leave to Amend**

2                   If the Court determines that a complaint should be dismissed, the Court must then decide  
3 whether to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave  
4 to amend generally should be denied only if allowing amendment would unduly prejudice the  
5 opposing party, cause undue delay, or be futile, or if the moving party has acted in bad faith. *See*  
6 *Leadsinger, Inc. v. BMG Music Pub'g*, 512 F.3d 522, 532 (9th Cir. 2008).

7                   **IV.    DISCUSSION**

8                   Although Defendants identify numerous deficiencies in Plaintiffs' FAC in their respective  
9 Motions to Dismiss, the Court need address only one. Plaintiffs' RESPA claim, which Roundpoint  
10 moves to dismiss, is the only federal claim in this lawsuit, and, for the reasons set forth below, the  
11 Court concludes that Plaintiffs fail to state a claim for violation of this statute. Having reached this  
12 conclusion, the Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining  
13 state-law claims. Accordingly, the Court GRANTS Defendants' Motions to Dismiss the FAC.

14                   **A.       RESPA Claim**

15                   Plaintiffs allege that Roundpoint violated RESPA in two ways. First, Plaintiffs allege  
16 Roundpoint failed to timely respond to Plaintiffs' QWR seeking information about the servicing of  
17 their loan, in violation of 12 U.S.C. § 2605(e)(1) and (e)(2)(C). FAC ¶¶ 100-102. Second,  
18 Plaintiffs allege that Roundpoint improperly made credit reports to credit reporting agencies by  
19 providing information on Plaintiffs' overdue payments during a 60-day time period in which  
20 servicers are not allowed to make such reports, in violation of 12 U.S.C. § 2605(e)(3). FAC ¶¶  
21 103, 107-108. In its Motion to Dismiss, Roundpoint argues that Plaintiffs' RESPA claim under 12  
22 U.S.C. § 2605(e)(1) and (e)(2)(C) fails because Plaintiffs fail to adequately plead damages or  
23 causally connect the alleged damages to any failure to respond to the QWR, and argues that  
24 Plaintiffs' RESPA claim under 12 U.S.C. § 2605(e)(3) fails because the FAC fails to plead that  
25 Plaintiffs have suffered actual damages during the 60-day prohibitory reporting period, and that  
26 those damages are causally connected to Roundpoint's alleged reporting. Roundpoint Mot. to  
27 Dismiss at 9-11. The Court discusses each alleged violation of RESPA in turn, and concludes that  
28 Plaintiffs have failed to state a claim with respect to both alleged RESPA violations.

1                   **1.       Failure to Timely Respond to the QWR**

2                   The Court first addresses Plaintiffs' allegation that Roundpoint violated 12 U.S.C. §  
 3                   2605(e)(1) and (e)(2)(C) by failing to timely respond to their QWR. The Court concludes that the  
 4                   allegations in the FAC are insufficient as pled.

5                   Under RESPA, servicers<sup>3</sup> of federally related mortgage loans are required to abide by  
 6                   certain disclosure obligations. *See* 12 U.S.C. § 2605(e). Among these obligations is the servicer's  
 7                   duty to acknowledge receipt of a QWR within a statutory period of 20 days after receiving a QWR.  
 8                   *See* 12 U.S.C. § 2605(e)(1)(A). Another obligation is that within 60 days after receipt of the QWR,  
 9                   the servicer must provide the borrower a written explanation that includes information requested or  
 10                   an explanation of why the information requested is unavailable. *See* 12 U.S.C. § 2605(e)(2)(C).<sup>4</sup>

11                   RESPA also states that a servicer is liable for "any actual damages to the borrower as a  
 12                   result of the failure [to comply with RESPA]." 12 U.S.C. § 2605(f)(1)(A). Accordingly, courts  
 13                   have held that a plaintiff alleging a violation of § 2605 must allege: "(i) that the servicer failed to  
 14                   adhere to the rules governing a QWR; and (ii) that the plaintiff incurred 'actual damages' as a  
 15                   consequence of the servicer's failure." *Givant v. Vitek Real Est. Industries Group, Inc.*, 2:11-CV-  
 16                   03158-MCE, 2012 WL 5838934, at \*4 (E.D. Cal. 2012). Courts have consistently held that a claim  
 17                   based on a loan servicer's RESPA violation must allege a specific causal relationship between the  
 18                   alleged damages and the RESPA violation, *see, e.g., Schneider v. Bank of America N.A.*, No. 11-  
 19                   2953, 2013 WL 1281902, at \*7 (E.D. Cal. 2013) (citing cases).

20  
 21                   

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 22                   <sup>3</sup> RESPA defines a "servicer" as "the person responsible for servicing of a loan," and "servicing"  
 23                   refers to "receiving any scheduled periodic payments from a borrower pursuant to the terms of any  
 24                   loan." 12 U.S.C. § 2605(i)(2)-(3).

25                   <sup>4</sup> On July 21, 2010, 12 U.S.C. § 2605(e)(1)(A) was amended, effective July 20, 2011, to decrease  
 26                   the response time for acknowledgement of receipt of a QWR from "20 days" to "5 days." 12  
 27                   U.S.C. § 2605(e)(2) was also amended to decrease the response time for providing information or  
 28                   an explanation as to why information cannot be obtained from "60 days" to "30 days." *See*  
 Mortgage Reform and Anti-Predatory Lending Act, Pub. L. No. 111-203, 124 Stat. 1376, 1463  
 (2010). Plaintiffs allege that they sent the QWR to defendant Roundpoint on January 28, 2013, and  
 thus the new time limits govern this case, despite the fact that Plaintiffs allege the old 20- and 60-  
 day deadlines in their FAC. Because the duration of these time limits do not impact the Court's  
 analysis on the Motion to Dismiss, the Court chooses to simply utilize the old 20- and 60-day  
 deadlines in this Order, as Plaintiffs allege.

1       Here, Roundpoint does not argue that Plaintiffs fail to allege that the servicer, Roundpoint,  
 2 failed to adhere to the rules governing a QWR. Indeed, Plaintiffs specifically allege that they sent  
 3 a QWR to Roundpoint on January 28, 2013, but that Roundpoint did not, “within 20 days after  
 4 receipt,” provide a written acknowledgment of receipt of the QWR as required under 12 U.S.C. §  
 5 2605(e)(1)(A). FAC ¶ 99, 101. Plaintiffs also allege that Roundpoint did not, “within 60 days  
 6 after receipt” of the QWR, “provide Plaintiffs with a written explanation or clarification that  
 7 includes information requested by Plaintiffs or an explanation of why the information requested is  
 8 unavailable or cannot be obtained[],” as required under 12 U.S.C. § 2605(e)(2)(C). FAC ¶ 102.

9       Rather, Roundpoint argues that Plaintiffs’ RESPA claim under 12 U.S.C. § 2605(e)(1)(A)  
 10 and (e)(2)(C) fails because Plaintiffs fail to adequately plead damages and causally connect the  
 11 alleged damages to Roundpoint’s alleged failure to respond to the QWR. Roundpoint Mot. to  
 12 Dismiss at 9-11. The Court disagrees that the Plaintiffs fail to adequately plead damages, given  
 13 that Plaintiffs allege in their RESPA claim section of the FAC that they “continue to be charged  
 14 additional interest, penalties, and fees,” and have been “damaged in the amount of ongoing  
 15 penalties, fees, and interest charged by Defendants, including but not limited to a charge of 6% of  
 16 any payment of principal and interest not received in full by the end of fifteen calendar days after  
 17 the date it was due.” FAC ¶¶ 105-106. However, the Court agrees with Roundpoint that Plaintiffs’  
 18 RESPA claim fails due to Plaintiffs’ failure to adequately plead a causal connection between  
 19 Roundpoint’s failure to respond to the QWR and Plaintiffs’ alleged damages, as explained below.  
 20 *See Urbano v. Bank of Am., N.A.*, 1:12-CV-00464 AWI, 2013 WL 359655, at \*7 (E.D. Cal. 2013)  
 21 (holding that plaintiffs’ failure to plead causation with any particularity was “fatal” to their RESPA  
 22 claim under 12 U.S.C. § 2605(e)(1) and (e)(2)).

23       Under *Iqbal*, a complaint “must contain sufficient factual matter, accepted as true, to ‘state  
 24 a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (citation omitted). Here,  
 25 while Plaintiffs allege that their damages were the “proximate result of Defendants’ actions,” FAC  
 26 ¶¶ 105-106, Plaintiffs fail to allege any facts that would render it plausible that these alleged  
 27 damages occurred as a result of Roundpoint’s failure to respond to Plaintiffs’ QWR. *C.f. Urbano*,  
 28 2013 WL 359655, at \*7 (finding failure to sufficiently plead causation in RESPA claim where

1 Plaintiff made a “conclusory statement that ‘[a]s a proximate result of Defendants’ actions,  
2 Plaintiff has been damaged in the amount of ongoing penalties, fees, and interest charged by  
3 Defendants . . .’”). Plaintiffs’ conclusory statement as to causation is also belied by Plaintiffs’  
4 other allegations. It is clear, based on the FAC, that Plaintiffs sent their QWR to Roundpoint on  
5 January 28, 2013 — approximately one year after they defaulted on the Loan and several months  
6 after the Notice of Default and Notice of Sale had been recorded. FAC ¶¶ 21, 22, 99. Thus, by the  
7 time Plaintiffs sent their QWR to Roundpoint, Plaintiffs likely had already sustained additional  
8 penalties, fees, and interest, thus suggesting that Plaintiffs’ alleged damages could not have been  
9 caused by any alleged failure by Roundpoint to respond to the QWR in early 2013. *See, e.g.*,  
10 *Givant*, 2012 WL 5838934 at \*4 (finding that defendants’ failure to respond to the QWR could not  
11 have caused loan-related damages because “Givant did not send her QWR until sixteen months  
12 after defaulting on her loan and until four months after Defendants had recorded a Notice of  
13 Trustee’s Sale . . . Thus, by the time Givant sent her QWR, she had already sustained the interest,  
14 penalties, and fees that the letter disputed”); *Tamburri v. SunTrust Mortgage Co.*, 875 F. Supp. 2d  
15 1009, 1015 (N.D. Cal. 2012) (dismissing plaintiff’s RESPA claim because plaintiff did not explain  
16 how her harm “derive[d] from any failure to respond to the QWRs, rather than from her own  
17 default”); *Brothers v. Bank of America, N.A.*, No. 12-cv-03121 EJD, 2012 U.S. Dist. LEXIS  
18 138631, at \*7-8 (N.D. Cal. Sept. 26, 2012) (dismissing a RESPA claim where the alleged damages  
19 did “not flow from any lack of response to the QWR,” but were likely “a result of Plaintiff’s failure  
20 to make loan payments”).

21 Additionally, Plaintiffs’ sole factual allegation, apart from their conclusory statement that  
22 their damages were the “proximate result of Defendants’ actions,” is that “[d]ue to Roundpoint’s  
23 failure to provide a breakdown of such fees resulting in Plaintiffs’ inability to properly dispute such  
24 fees, Plaintiffs continue to be charged additional interest, penalties, and fees for which he [sic]  
25 would not otherwise be charged.” FAC ¶ 105. This statement is insufficient to render Plaintiffs’  
26 damages claim plausible because Plaintiffs fail to specify with any particularity why their inability  
27 to dispute additional interest and fees after their default was caused by Roundpoint’s failure to  
28 provide a breakdown of fees, as opposed to Plaintiffs’ own failure to send Roundpoint a QWR

1 requesting this information until one year *after* they defaulted on the loan. Accordingly, without  
 2 more specific factual allegations in the FAC, the Court concludes that Plaintiffs' allegations fail to  
 3 state a claim for relief under 12 U.S.C. § 2605(e)(1) and (e)(2) that is "plausible on its face." *Iqbal*,  
 4 556 U.S. at 678.

5 **2. Credit Reporting During the 60-Day Prohibitory Period**

6 The Court now turns to Plaintiffs' second claim that Roundpoint violated 12 U.S.C. §  
 7 2605(e)(3), *see* FAC ¶¶ 107-108, and concludes that Plaintiffs' allegations on this alleged violation  
 8 also fail to state a claim.

9 Under RESPA, servicers must refrain from providing information regarding overdue loan  
 10 payments to consumer reporting agencies during a 60-day period after receiving a borrower's  
 11 QWR. 12 U.S.C. § 2605(e)(3).<sup>5</sup> In its motion to dismiss, Roundpoint argues that Plaintiffs fail to  
 12 plead that they suffered actual damages during the 60-day prohibitory reporting period, or that  
 13 those damages are causally connected to Roundpoint's alleged reporting. *See* Roundpoint Mot. to  
 14 Dismiss at 11. As stated in Section IV.A.1 above, a plaintiff alleging a violation of § 2605 must  
 15 allege: "(i) that the servicer failed to adhere to the rules governing a QWR; and (ii) that the plaintiff  
 16 incurred 'actual damages' as a consequence of the servicer's failure." *Givant*, 2012 WL 5838934  
 17 at \*4.

18 In their FAC, Plaintiffs allege that Roundpoint made "improper credit reporting during the  
 19 60-day time period in violation of 12 U.S.C. § 2605(e)(3)." FAC ¶ 108. They also allege that  
 20 Roundpoint's failure to comply with the statute caused Plaintiffs "significant injury to their credit  
 21 score and prevented [Plaintiffs] from obtaining additional credit during this time period." FAC ¶  
 22 107. The Court finds these allegations insufficient to state a claim under § 2605(e)(3), for the  
 23 following reasons.

24  
 25  
 26 <sup>5</sup> Specifically, this provision states: "During the 60—day period beginning on the date of the  
 27 servicer's receipt from any borrower of a qualified written request relating to any dispute regarding  
 28 the borrower's payments, a servicer may not provide information regarding any overdue payment,  
 owed by such borrower and relating to such period or qualified written request, to any consumer  
 reporting agency . . . ."

1       While the Court disagrees with Roundpoint that Plaintiffs fail to plead that they suffered  
2 actual damage, given the allegation regarding the specific injury to Plaintiffs' credit score, the  
3 Court agrees with Roundpoint that Plaintiffs fail to adequately allege any causal connection  
4 between Roundpoint's alleged reporting and Plaintiffs' alleged damage to their credit score. This  
5 is because Plaintiffs' allegations are entirely conclusory. *Urbano*, 2013 WL 359655, at \*7 (holding  
6 Plaintiff's allegations regarding § 2605(e)(3) are "wholly conclusory" because they "fail to  
7 describe when and to whom Defendants allegedly provided the information."). While Plaintiffs  
8 allege that Roundpoint reported to credit agencies during the 60-day prohibitory period, they fail to  
9 identify in any meaningful, or even cursory, fashion when such reporting occurred, to which  
10 agencies the reporting was made, or whether information regarding any overdue payment was  
11 included in such a report. *See Long v. Bank of America, N.A.*, 2:12-cv-00542-GEB-CKD, 2013  
12 U.S. Dist. LEXIS 46350, at \*9-10 (E.D. Cal. 2013); *Urbano v. Bank of Am., N.A.*, 1:12-CV-00464  
13 AWI, 2012 WL 2934154, at \*11 (E.D. Cal. 2012) (finding that plaintiff failed to state a viable  
14 claim based on § 2605(e)(3) where he alleged "no facts with respect to this violation, such as when  
15 the reporting occurred, to which agencies the reporting was made, or whether information  
16 regarding an overdue payment was included in such a report."). Nor does the FAC specify any  
17 creditor who denied Plaintiffs credit in reliance upon any credit report issued by Roundpoint during  
18 the 60 day period. Without further factual allegations, the Court finds that Plaintiffs' allegations do  
19 not state a claim for relief that is "plausible on its face." *Iqbal*, 556 U.S. at 678. This is especially  
20 true in light of how Plaintiffs' own allegations suggest that Plaintiffs' own default, and not  
21 Roundpoint's alleged credit reporting during the 60-day period, negatively impacted Plaintiffs'  
22 credit rating. The FAC alleges that Plaintiffs defaulted on their Loan in early 2012. FAC ¶ 21.  
23 This default would have been reported to credit rating agencies well before Plaintiffs sent their  
24 QWR to Roundpoint a year later, on January 28, 2013. FAC ¶ 99. Thus, the FAC suggests that  
25 Plaintiffs' 2012 default—and not Roundpoint's alleged reporting during the 60-day period—  
26 negatively impacted Plaintiffs' credit rating and ability to obtain credit.

27       The Court simply notes that Plaintiffs' opposition to Roundpoint's Motion to Dismiss does  
28 not respond in any meaningful way to these points except to argue that "Roundpoint does not

1 contend that it complied with the requirements of RESPA.” Opp’n at 13. Plaintiff’s argument is  
 2 misplaced. Roundpoint’s motion to dismiss serves the function of attacking the sufficiency of the  
 3 FAC, and does not have to set forth any agreement with or denial of any allegations in the FAC.  
 4 Further, Plaintiffs’ opposition basically reiterates the same allegations set forth in the FAC. *See id.*  
 5 Accordingly, the Court finds that Plaintiffs’ failure to plead causation between damages and  
 6 Roundpoint’s alleged RESPA violation is “fatal” to Plaintiff’s claim that Roundpoint violated 12  
 7 U.S.C. § 2605(e)(3). *Urbano*, 2013 WL 359655, at \*7.

8 Given these various deficiencies in Plaintiffs’ RESPA claim, the claim is DISMISSED as to  
 9 all the defendants, i.e., Roundpoint, Quality, and Does 1 through 25, despite the fact that only  
 10 Roundpoint moves to dismiss the claim. *See* FAC at 22; *see Silverton v. Dep’t of the Treasury*, 644  
 11 F.2d 1341, 1345 (9th Cir. 1981) (holding a court “may properly on its own motion dismiss an  
 12 action as to defendants who have not moved to dismiss where such defendants are in a position  
 13 similar to that of moving defendants or where claims against such defendants are integrally  
 14 related.”); *see also Abaghinin v. Amvac Chem. Corp.*, 545 F.3d 733, 742–743 (9th Cir. 2008).<sup>6</sup>  
 15 However, because Plaintiffs may be able to allege additional facts to cure the deficiencies  
 16 identified herein, and because none of the conditions in *Leadsinger* have been met in this case, the  
 17 Court grants Plaintiffs leave to amend their RESPA claim. Plaintiffs themselves have requested  
 18 that if the Court dismisses any claim, the Court should “allow them sufficient time to amend their  
 19 complaint to allege additional facts sufficient to adequately plead their claim.” Opp’n at 20.

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 23       <sup>6</sup> The Court further notes that although Quality has not moved to dismiss the claim, the Court has  
 24 found there would be strong grounds to dismiss the claim as against Quality (and Does 1-25) for  
 25 failure to state a claim under Rule 12(b)(6) for reasons other than the defects identified by  
 26 Roundpoint. Specifically, Section 2605(e) imposes duties only on loan servicers. *See, e.g.*, 12  
 27 U.S.C. § 2605(e) (“Duty of loan servicer to respond to borrower inquiries”); § 2605(e)(2) (within a  
 28 certain number of days of receiving a QWR, “the servicer shall” undertake certain actions).  
 Roundpoint is the only loan servicer identified in this case, *see* FAC ¶7 (identifying Roundpoint as  
 a loan servicer), and Quality is identified as an “agent” and “trustee” of RBSFP, which is alleged to  
 be a “residential lender,” FAC ¶¶ 5, 8, 22. The FAC fails to explain how or why the remaining  
 non-loan servicer defendants - Quality and Does 1 through 25 - can be held liable for violations of  
 12 U.S.C. § 2605(e).

## **B. Remaining State Law Claims**

Because the parties in this case are non-diverse, *see* FAC ¶¶ 3-8, the now-dismissed RESPA claim provides the sole basis for federal subject matter jurisdiction in this case. While a federal court may exercise supplemental jurisdiction over state-law claims “that are so related to claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution,” 28 U.S.C. § 1337(a), a court may decline to exercise supplemental jurisdiction where it “has dismissed all claims over which it has original jurisdiction,” 28 U.S.C. § 1337(c)(3); *see also Albingia Versicherungs A.G. v. Schenker Int’l, Inc.*, 344 F.3d 931, 937–38 (9th Cir. 2003) (Section 1337(c) grants federal courts the discretion to dismiss state-law claims when all federal claims have been dismissed). A court, in considering whether to retain supplemental jurisdiction, should consider factors such as “economy, convenience, fairness, and comity,” *Acri v. Varian Assocs.*, 114 F.3d 999, 1001 (9th Cir. 1997) (en banc) (internal quotation marks omitted). However, “in the usual case in which all federal-law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state[-]law claims.” *Exec. Software N. Am., Inc. v. U.S. Dist. Court*, 24 F.3d 1545, 1553 n.4 (9th Cir. 1994) (emphasis omitted), *overruled on other grounds by Cal. Dep’t of Water Res. v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008).

Here, the balance of factors weighs in favor of dismissing Plaintiffs' remaining state law claims. This case has yet to proceed beyond the pleadings, and thus few judicial resources are wasted by dismissing the case at this stage. Further, dismissal promotes comity by allowing the California courts to interpret state law concerning the state law claims in the first instance. Accordingly, the Court declines to exercise supplemental jurisdiction over the remaining state law causes of action in Plaintiffs' FAC. *See Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991) (stating that, after dismissal of all federal claims in an action, "it is generally preferable for a district court to remand the remaining pendent claims to state court."). The Court thus GRANTS Roundpoint's Motion to Dismiss the remaining state law claims as against all defendants on those claims for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and GRANTS RBS's Motion to Dismiss the seven state law claims as against all

1 defendants on those claims for lack of subject matter jurisdiction under Federal Rule of Civil  
2 Procedure 12(b)(1).

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court GRANTS RBS and Roundpoint's Motions to Dismiss  
5 the FAC with leave to amend. Should Plaintiffs elect to file a Second Amended Complaint  
6 addressing the deficiencies discussed herein, they shall do so within 21 days of the date of this  
7 Order. Plaintiffs may not add new claims or parties without leave of the Court or stipulation by the  
8 parties pursuant to Federal Rule of Civil Procedure 15. Plaintiffs' failure to meet the 21-day  
9 deadline to file an amended complaint or failure to cure the deficiencies identified in this Order  
10 will result in a dismissal with prejudice.

11 **IT IS SO ORDERED.**

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13 Dated: January 7, 2014

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LUCY H. KOH  
United States District Judge